

LEGISLATIVE RESOLUTION 235

Introduced by Von Minden, 17; Hefner, 19; Warner, 25;
Vickers, 38; Chambers, 11
Passed by the Legislature on April 5, 1984

A Resolution to propose an amendment to Article V, section 30, of the Constitution of Nebraska.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE EIGHTY-EIGHTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

Section 1. That at the general election in November 1984 there shall be submitted to the electors of the State of Nebraska for approval the following amendment to Article V, section 30, of the Constitution of Nebraska, which is hereby proposed by the Legislature:

"Sec. 30. (1) A Justice or Judge of the Supreme Court or judge of any court of this state may be reprimanded, disciplined, censured, suspended without pay for a definite period of time, not to exceed six months, or removed from office for (a) willful misconduct in office, (b) willful disregard of or failure to perform his or her duties, (c) habitual intemperance, (d) conviction of a crime involving moral turpitude, (e) disbarment as a member of the legal profession licensed to practice law in the State of Nebraska, or (f) conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or he or she may be retired for physical or mental disability seriously interfering with the performance of his or her duties if such disability is determined to be permanent or reasonably likely to become permanent. Any citizen of the State of Nebraska may request the Commission on Judicial Qualifications to consider the qualifications of any Justice or Judge of the Supreme Court or other judge, and in such event the commission shall make such investigation as the commission deems necessary and shall, upon a finding of probable cause, ~~privately~~ reprimand such Justice or Judge of the Supreme Court or other judge or order a formal open hearing to be held before it concerning the reprimand, discipline, censure, suspension, removal, or retirement of such Justice or Judge of the Supreme Court or other judge. In the alternative or in addition, the commission may request the Supreme Court to appoint one or more special masters who shall be judges of courts of record to hold a formal open hearing to take evidence in any such matter, and to report to the commission. If, after formal open hearing, or after considering the record and report of the masters, the commission finds that the charges are established by clear and convincing evidence, it shall recommend to the Supreme Court that the Justice or Judge of the Supreme Court or other judge involved shall be reprimanded, disciplined, censured, suspended without pay for a definite period of time not to exceed six months, removed,

or retired as the case may be.

(2) The Supreme Court shall review the record of the proceedings and in its discretion may permit the introduction of additional evidence. The Supreme Court shall make such determination as it finds just and proper, and may order the reprimand, discipline, censure, suspension, removal, or retirement of such Justice or Judge of the Supreme Court or other judge, or may wholly reject the recommendation. Upon an order for retirement, the Justice or Judge of the Supreme Court or other judge shall thereby be retired with the same rights and privileges as if he or she had retired pursuant to statute. Upon an order for removal, the Justice or Judge of the Supreme Court or other judge shall be removed from office, his or her salary shall cease from the date of such order, and he or she shall be ineligible for judicial office. Upon an order for suspension, the Justice or Judge of the Supreme Court or other judge shall draw no salary and shall perform no judicial functions during the period of suspension. Suspension shall not create a vacancy in the office of Justice or Judge of the Supreme Court or other judge.

(3) Upon order of the Supreme Court, a Justice or Judge of the Supreme Court or other judge shall be disqualified from acting as a Justice or Judge of the Supreme Court or other judge, without loss of salary, while there is pending (a) an indictment or information charging him or her in the United States with a crime punishable as a felony under Nebraska or federal law or (b) a recommendation to the Supreme Court by the Commission on Judicial Qualifications for his or her removal or retirement.

(4) In addition to the procedure set forth in subsections (1) and (2) of this section, on recommendation of the Commission on Judicial Qualifications or on its own motion, the Supreme Court (a) shall remove a Justice or Judge of the Supreme Court or other judge from office when in any court in the United States such justice or judge pleads guilty or no contest to a crime punishable as a felony under Nebraska or federal law, and (b) may suspend a Justice or Judge of the Supreme Court or other judge from office without salary when in any court in the United States such justice or judge is found guilty of a crime punishable as a felony under Nebraska or federal law or of any other crime that involves moral turpitude. If his or her conviction is reversed, suspension shall terminate and he or she shall be paid his or her salary for the period of suspension. If he or she is suspended and his or her conviction becomes final the Supreme Court shall remove him or her from office.

(5) All papers filed with and proceedings before the commission or masters appointed by the Supreme Court pursuant to this section prior to a reprimand or any formal open hearing shall be confidential. The filing of papers

with and the testimony given before the commission or masters or the Supreme Court shall be deemed a privileged communication.

When the Commission on Judicial Qualifications determines that disciplinary action is warranted, whether it be a reprimand or otherwise, the Commission on Judicial Qualifications shall issue one or more short announcements confirming that a complaint has been filed; stating the subject and nature of the complaint, the disciplinary action recommended or reprimand issued, or the date of the hearing; clarifying the procedural aspects; and reciting the right of a judge to a fair hearing.

When the Commission on Judicial Qualifications determines that disciplinary action is not warranted, and the existence of any investigation or complaint has become publicly known, the judge against whom a complaint has been filed or investigation commenced may waive the confidentiality of papers and proceedings under this subsection.

The Supreme Court shall by rule provide for procedure under this section before the commission, the masters, and the Supreme Court.

(6) No Justice or Judge of the Supreme Court or other judge shall participate, as a member of the commission, or as a master, or as a member of the Supreme Court, in any proceedings involving his or her own reprimand, discipline, censure, suspension, removal, or retirement."

Sec. 2. The proposed amendment shall be submitted to the electors in the manner prescribed by Article XVI, section 1, of the Constitution of Nebraska. The proposition for the submission of the proposed amendment shall be placed upon the ballot in the following form:

"Constitutional amendment to change provisions and procedures relating to disciplinary actions against judges.

For
Against"

Sec. 3. That the proposed amendment, if adopted, shall be in force and take effect immediately upon the completion of the canvass of the votes, at which time it shall be the duty of the Governor to proclaim it as a part of the Constitution of Nebraska.